

REMARKS:

In the Office Action dated May 4, 2004, the Examiner objected to Figure 4 under 37 C.F.R. § 1.83(a) because the Examiner stated the legends for certain of the boxes therein were not consistent with the specification.

- 5 Figure 4 has been amended to provide this consistency.

A number of typographical errors in the specification were noted, all of which have been corrected. The Examiner stated the reference at page 15, line 15 to the comparator 13 was unclear, because the Examiner stated no such reference numeral is present in the figures. Figure 4 as originally filed, 10 however, included Reference Numeral 13, designating the circle representing a comparator with inputs designated "+" and "-".

Claims 14-21, 23 and 27 were rejected under 35 U.S.C. §102(b) as being anticipated by Heinze.

- No rejection as to claims 20, 24-26 or 28 was made in the Office 15 Action, however, neither were those claims indicated to be allowable.

Applicants note with appreciation the interview courteously afforded counsel for the Applicants on July 14, 2004, wherein the above rejection was discussed. Claim 1 has been amended consistent with the discussion at the interview.

- 20 As discussed at the interview, claim 1 is intended to describe an evaluation unit that operates based on Figure 1 of the present application. The evaluation unit thus performs several steps, beginning with the use of an electric restitution curve to which the evaluation unit has access. This curve may be stored in the evaluation unit, but it is only necessary that the 25 evaluation unit have access to this electric restitution curve. Using this electric restitution curve, the evaluation unit finds the electric restitution of the heart at the average duration of the action potential, obtained from the action potential information. This action potential duration, determined from the electric restitution curve, has a measuring variable associated therewith.

Examples of suitable measuring variables are provided in claim 17. The evaluation unit then identifies a relationship between changes in the measuring variable, caused by modulation of the stimulation interval, and the average duration. This relationship is then compared to a predetermined
5 value (this takes place in the aforementioned comparator 13 in Figure 4). The average duration is then controlled deponents on the result of this comparison.

As also discussed at the interview, the Heinze reference does control operation of a pacemaker dependent on a determination of the diastolic
10 phase, and information obtained therefrom. Nevertheless, the Heinze reference does not anywhere mention the use of an electric restitution curve as the starting point from which the aforementioned measuring variable is obtained. Since the Heinze reference does not disclose obtaining the measuring variable in this manner, it does not disclose or suggest identifying
15 the aforementioned relationship between changes in this measuring variable, caused by modulating the stimulation interval, and the average duration of the action potential. Since the Heinze reference does not disclose or suggest identifying such a relationship, the Heinze reference does not disclose or suggest comparing this relationship to at least one predetermined value to
20 obtain a comparison result. Since the Heinze reference does not disclose or suggest obtaining such a comparison result, the Heinze reference does not disclose or suggest controlling the average duration dependent on such a comparison result.

The Heinze reference, therefore, does not disclose all of the elements
25 of independent claim 14 as arranged and operating in that claim, and therefore does not anticipate claim 14, or any of the claims depending therefrom.

As noted above, these changes were discussed at the aforementioned interview, and the Examiner stated that making such changes after the final rejection would have raised new issues requiring further searching or consideration. The present RCE is therefore being filed to permit
5 consideration of the present Amendment. Early reconsideration of the application is therefore respectfully requested.

Submitted by,

 (Reg. 45,877)

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